

AGENDA BILL APPROVAL FORM

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| Agenda Subject: Resolution No. 4436 | | Date: December 15, 2008 |
| Department: Human Resources | Attachments: Resolution No. 4436 | Budget Impact: |
| Administrative Recommendation: City Council adopt Resolution No. 4436. | | |
| Background Summary: <p>A resolution authorizing the Mayor and City Clerk to execute a lease agreement between the City of Auburn and Auburn Professional Plaza, LLC.</p> <p>S1215-2</p> <p>A3.17</p> | | |
| Reviewed by Council & Committees: <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Arts Commission <input type="checkbox"/> Airport <input type="checkbox"/> Hearing Examiner <input type="checkbox"/> Human Services <input type="checkbox"/> Park Board <input type="checkbox"/> Planning Comm. </div> <div style="width: 45%;"> COUNCIL COMMITTEES: <input checked="" type="checkbox"/> Finance <input type="checkbox"/> Municipal Serv. <input type="checkbox"/> Planning & CD <input checked="" type="checkbox"/> Public Works <input type="checkbox"/> Other _____ </div> </div> | | Reviewed by Departments & Divisions: <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input checked="" type="checkbox"/> Building <input type="checkbox"/> Cemetery <input type="checkbox"/> Finance <input checked="" type="checkbox"/> Fire <input type="checkbox"/> Legal <input checked="" type="checkbox"/> Public Works <input type="checkbox"/> Information Services </div> <div style="width: 45%;"> <input type="checkbox"/> M&O <input type="checkbox"/> Mayor <input type="checkbox"/> Parks <input checked="" type="checkbox"/> Planning <input type="checkbox"/> Police <input type="checkbox"/> Human Resources </div> </div> |
| Action: Committee Approval: <input type="checkbox"/> Yes <input type="checkbox"/> No Council Approval: <input type="checkbox"/> Yes <input type="checkbox"/> No Call for Public Hearing ____/____/____ Referred to _____ Until ____/____/____ Tabled _____ Until ____/____/____ | | |
| Councilmember: Backus | | Staff: Heineman |
| Meeting Date: December 15, 2008 | | Item Number: VIII.B.10 |

RESOLUTION NO. 4 4 3 6

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF AUBURN, WASHINGTON,
AUTHORIZING THE MAYOR AND CITY CLERK
TO EXECUTE A PARKING GARAGE LEASE
AGREEMENT BETWEEN THE CITY OF
AUBURN AND AUBURN PROFESSIONAL
PLAZA, LLC

WHEREAS, the City of Auburn (City) and Auburn Professional Plaza, LLC are coordinating on a development project involving the construction of a three-story mixed-use building totaling approximately 89,000 square feet to be located at the intersection of Main Street and Division Street which is intended to house mixed public and private offices, including an area to serve as a City Hall Annex; and

WHEREAS, in order to accommodate the necessary parking for that project, it is appropriate for the City and Auburn Professional Plaza, LLC to enter into a Parking Garage Lease Agreement relating to the parking structure being built north of the current City Hall site, which lease agreement the parties have negotiated in terms satisfactory to both the City and Auburn Professional Plaza, LLC.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, KING COUNTY, WASHINGTON, HEREBY RESOLVES as follows:

Section 1. The Mayor of the City of Auburn and the Auburn City Clerk are hereby authorized to execute a Parking Garage Lease Agreement between

the City Of Auburn and Auburn Professional Plaza, LLC, in substantial conformity with the Lease Agreement attached hereto, marked as Exhibit "A" and incorporated herein by this reference.

Section 2. The Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the directives of this legislation.

Section 3. This Resolution shall be in full force and effect upon passage and signatures hereon.

Dated and Signed this _____ day of _____, 2008.

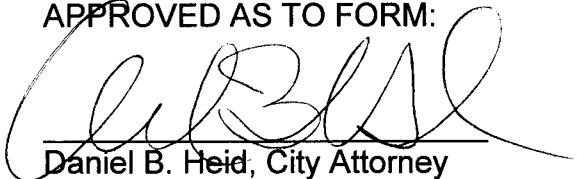
CITY OF AUBURN

PETER B. LEWIS
MAYOR

ATTEST:

Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:



Daniel B. Heid, City Attorney

PARKING GARAGE LEASE AGREEMENT

THIS PARKING GARAGE LEASE AGREEMENT (this "Lease") is entered into as of the _____ day of December, 2008 by and between City of Auburn, a Washington municipal corporation hereafter referred to as "Landlord" and Auburn Professional Plaza, LLC, a Washington limited liability company hereafter referred to as "Tenant". Landlord and Tenant hereby agree as follows:

ARTICLE 1. BASIC LEASE INFORMATION.

1.1 In addition to the terms which are defined elsewhere in this Lease, the following terms shall have the following meanings:

- (a) **PARKING FACILITY:** The portion of the parking structure that is to be constructed by Auburn Regional Medical Center ("ARMC"), upon land located on the north side of First Street NW, between A Street NW and Division Street, in the City of Auburn, King County, Washington that is under the Landlord's ownership or control. Pursuant to that certain Purchase and Sale Agreement between Landlord and ARMC, Landlord will become the owner of 145 parking stalls in the parking structure as part of a condominium.
- (b) **TERM:**
 - i. **Primary Term:** 15 years beginning on the Commencement Date and expiring on the Expiration Date.
 - ii. **Option Terms:** Four Option Terms of 10 years each.
 - iii. The Primary Term and the Option Terms are collectively referred to as the Term.
- (c) **COMMENCEMENT DATE:** Upon the later of: (a) the date the Parking Facility receives a Certificate of Occupancy from Landlord (under its regulatory governmental powers) or (b) October 1, 2009.
- (d) **EXPIRATION DATE:** Subject to the Option Terms, the Expiration Date shall be on the last day of the calendar month 15 years after the Commencement Date. If an Option is exercised, the Expiration Date shall be on the last day of the calendar month at the end of that Option Term.
- (e) **MONTHLY RENT:** Tenant agrees to pay Seventy (\$70), plus applicable Operating Costs, per Parking Stall per month for each Parking Stall requested as outlined in Sections 2.3, 3.1, 3.2 and 3.3, and subject to annual increases as provided hereinafter.

ARTICLE 2. AGREEMENT, USE, MAINTENANCE AND REPAIR

2.1 Lease. For the first 60 months Landlord hereby agrees to lease a minimum of ten (10) and up to a maximum of 50 parking stalls (herein referred to as the "Parking Stalls") in the Parking Facility, and Tenant hereby leases the Parking Stalls from Landlord, according to the terms and conditions of this Lease. The specific number of Parking Stalls shall be established as set forth in Section 3.1 hereof. Tenant shall inform Landlord no later than the last day of the 57th month the number of Parking Stalls Tenant desires to lease for the months 61 – 120 of the Term. Tenant shall inform Landlord no later than the last day of the 117th month of the Term as to the number of Parking Stalls Tenant desires to lease for months 121 – 180 of the Term. Tenant may amend the number of Parking Stalls at the beginning of any Option Term, by three months advance written notice to Landlord. This Lease also confers reasonable ingress and egress for motor vehicles and pedestrians throughout the entire Parking Facility to access the Parking Stalls. The specific Parking Stalls shall be assigned by Landlord, and be subject to Tenant's reasonable approval. To the extent reasonably possible, the Parking Stalls shall be assigned in groups adjacent to one another, rather than sporadically as individual Parking Stalls throughout the Parking Facility.

Tenant shall not be responsible for any defects in construction, workmanship or design of the Parking Stalls or Parking Facility.

Landlord will be deemed to have delivered possession of the Parking Stalls to Tenant on the Commencement Date, and, subject to Landlord's representations in the preceding paragraph, Tenant will be deemed to have accepted the Parking Stalls, based on its own inspection, in their then "AS-IS" condition.

2.2 Use. Tenant shall use the Parking Stalls only for the purpose of parking motor vehicles and purposes incidental to that use. Tenant shall not allow the Parking Stalls to be used for any unlawful purposes or for purposes that may result in a violation of any local, state or federal laws, statutes or ordinances applicable to the Parking Facility.

2.3 Operating Costs. "Operating Costs" shall mean the following costs and expenses incurred by Landlord, except for the Excluded Costs (as defined below): (i) any and all Assessments (as defined in the Parking Facility's Condominium Declaration) properly assessed, charged or levied against the Premises in each fiscal year under the Condominium Documents for costs and expenses incurred by the owners' association for the Condominium (the "Association") in connection with the upkeep, operation, maintenance, repair, and management of the Parking Facility and the property; and (ii) any costs and expenses incurred by Landlord in each fiscal year in connection with the upkeep, operation, maintenance, repair, and management of the Parking Facility. Unless Landlord elects otherwise, the fiscal year shall be the calendar year. Tenant acknowledges and agrees that costs and expenses may include, but are not limited to these costs and expenses: Leasehold Excise Taxes at 12.84% of the Monthly Rent (if Leasehold Excise Tax is required by state statute), insurance premiums, utility costs, janitorial costs and expenses, property management staff and/or contract services expenses and trash collection. Such reimbursement shall, at the sole discretion of Landlord, be based upon the proportion of the total Operating Costs, with such proportion to be the ratio of the Parking Stalls leased by Tenant divided by the total parking stalls in the Parking Facility, with such total costs to exclude any extraordinary expenses associated with specific usage of specific parking stalls not leased by Tenant. Operating Costs shall exclude any costs associated with the correction of any defects in

construction, workmanship or design of the Parking Stalls or Parking Facility, and shall also exclude any costs associated with repair or reconstruction after any casualty ("Excluded Costs").

2.4 Term. The duration of the Lease shall be the Term. The Term will commence on the Commencement Date and will expire on the Expiration Date, as such Expiration Date may from time to time be extended by virtue of the Option Terms. Tenant may exercise each Option Term by notifying Landlord in writing of Tenant's intent to exercise the Option Term no less than ninety (90) days prior to then Expiration Date.

ARTICLE 3. RENT

3.1 Rental Amount. For the period beginning upon the Commencement Date and continuing through and including the last day of the sixtieth (60th) full calendar month after the Commencement Date, Tenant shall pay in advance seventy dollars (\$70.00) plus Landlord's estimate of applicable Operating Costs (including Leasehold Excise Tax of 12.84% if Leasehold Excise Tax is required to be paid by statute) per Parking Stall per month in six (6) month increments for the requested Parking Stalls to the Landlord at **City of Auburn, 25 West Main Street, Auburn WA, 98001**. Tenant shall notify Landlord in writing of the number of Parking Stalls needed for each such six month period on or before the seventh calendar day of the Month preceding the expiration of the previous six month notification. If Tenant fails to provide Landlord with notice, as provided for in this paragraph, then for the following six month period Landlord will lease to Tenant and Tenant shall lease from Landlord the same number of Parking Stalls as were leased during the preceding six month period.

For the period commencing upon the first day of the sixty first (61st) full calendar month after the Commencement Date and continuing through the Term of this Agreement the Monthly Rent shall be due and payable, without prior notice or demand, in equal monthly installments on the first day of each calendar month, without any set-off or deduction.

3.2 Annual Adjustment. The Monthly Rent per Parking Stall shall be adjusted annually, starting as of January 1, 2011, during the Term of this Lease (including the Option Terms), in accordance with the previous U.S. CPI-W, June to June. For each sixty (60) month period of time beginning January 1, 2021 until the last day of the Term, Tenant shall pay, as Monthly Rent the "fair market rental value" for the Parking Stalls using comparable parking facilities in Auburn, Washington. The "fair market rental value" shall be determined in good faith between Landlord and Tenant not later than the last day of the third (3rd) full calendar month prior to the commencement of the applicable sixty (60) month period. If the parties are unable to agree upon the fair market rental for the Premises, or if there are no so such comparable parking facilities, then the rate shall be established by either (a) agreement of the parties; or (b) as determined by an independent third party licensed real estate appraiser.

3.3 Additional Rent. Operating Costs are sometimes hereinafter referred to as "Additional Rent." Additional Rent and Monthly Rent may be referred to together as "rent." Landlord shall be reimbursed by Tenant for Additional Rent on the same date that Monthly Rent is due each month, Tenant shall pay Landlord one-twelfth (1/12th) of Landlord's reasonable estimate of Operating Costs for the then current fiscal year. Within a reasonable time after the expiration of each fiscal year, Landlord shall submit to Tenant a statement setting forth: (i) the total Operating Costs and (ii) the aggregate of the payments made by Tenant with respect to the foregoing in such fiscal year. If actual Operating Costs exceeds the aggregate of the payments received by Landlord, Tenant shall pay the deficiency to Landlord within ten (10) days after

receipt of Landlord's statement. If said payments exceed Operating Costs, Tenant shall be entitled to reimbursement within ten (10) days after receipt of Landlord's statement. During any part of the Term which shall be less than a full fiscal year, Operating Costs shall be pro rated on a monthly basis (with the 15th day of the month being the measurement date) with the intent to approximate the portion of the Operating Costs that are attributable to the portion of the fiscal year occurring within the Term.

3.4 Tenant's Audit Right. Landlord's books and records of all Operating Costs, any portion of which Tenant is to pay to or on behalf of Landlord, shall be kept in a convenient place at Landlord's principal accounting office, and Tenant shall have the right, during normal business hours after fifteen (15) days written notice to Landlord, to inspect, audit and copy them. In addition, upon fifteen (15) days written notice to Landlord, Landlord shall exercise its rights under the Condominium Documents, as the owner of the Parking Stalls, and authorize Tenant to inspect, audit and copy the financial records of the Association. Tenant shall have one hundred twenty (120) days from the date Landlord renders a final invoice for the applicable fiscal year during which to challenge any of the charges included in such invoice and if a mathematical or other error is discovered, it will be corrected and appropriate payments or credits made within fourteen (14) days of any said discovery. If it is found that Tenant has been overcharged by three percent (3%) or more by Landlord, Landlord shall pay the related auditing costs; and if by less than three percent (3%) [or if Tenant had been undercharged] said auditing costs shall be borne by Tenant. If it is found that Assessments payable with respect to the Parking Stalls have been overcharged by three percent (3%) or more by the Association, Landlord shall pay (if Landlord is in control of the Association under the Condominium Document) or Landlord shall assign its right to recover from the Association its right to receive (if Landlord is not in control of the Association) the related auditing costs; and if by less than three percent (3%) [or if Tenant had been undercharged] said auditing costs shall be borne by Tenant. Any said recovery shall be limited to reasonable audit costs actually incurred.

ARTICLE 4. INSURANCE AND INDEMNITY

4.1 Insurance. Landlord shall maintain, or cause others to maintain for the benefit of Landlord and Tenant, the following insurance in the amounts specified below or such other amounts as Landlord and Tenant may from time to time reasonably request, with insurance companies and on forms satisfactory to Landlord to the extent allowed by applicable law. The cost of such insurance shall be included within the definition of Operating Costs.

(a) Bodily injury and property damage liability insurance, with a combined single occurrence limit of not less than \$1,000,000. All such insurance will be equivalent to coverage offered by a Commercial General Liability form including, without limitation, personal injury, death of persons or damage to property occurring in, on, or about the Parking Facility, and contractual liability coverage for the performance by the parties of the indemnity agreements set forth in Section 4.3 of this Lease;

(b) Insurance covering the Parking Facility, including structural components and any other improvements comprising the Parking Facility, in an amount not less than the full replacement cost. Property forms will provide coverage on a broad form basis insuring against "all risks of direct physical loss." All policy proceeds will be used for the repair or replacement of such property damaged or destroyed; and the remainder shall be used to reduce future Operating Costs;

(c) Any additional insurance reasonably requested by either party to cover any unusual risks created by the nature of the use of the Parking Facility.

(d) Landlord shall under no circumstances be required to insure automobiles or, except as to the coverage described in subclause 4.1(b) above, property not owned by Landlord.

4.2 Forms of the Policies. Certificates of insurance, together with copies of endorsements, when applicable, listing Landlord, Tenant and any others specified by Landlord or Tenant as additional insureds, will be delivered by Landlord to Tenant prior to the Commencement Date and from time to time thereafter at least 10 days' prior to the expiration of the term of each such policy. All Commercial General Liability or comparable policies will name Landlord, Tenant and such other persons or entities as Landlord and Tenant specify from time to time as additional insureds entitling them to recover under such policies for any loss sustained by them, their agents and employees. All such policies will provide that they may not be terminated nor may coverage be reduced except after 30 days' prior written notice to Landlord and Tenant. All Commercial General Liability and property policies maintained by Landlord will be written as primary policies, not contributing with and not supplemental to the coverage that Tenant may carry. It is understood that the insurance coverage provided by Landlord hereinabove is for the joint and several protection of Landlord and Tenant, and that the same is provided in support of the indemnifications provided by Landlord and Tenant under Section 4.3 below.

4.3 Indemnification, Waiver, and Release.

(a) Tenant's Indemnification. Tenant will neither hold nor attempt to hold Landlord, its employees or agents liable for, and Tenant will indemnify and hold harmless Landlord, its employees and agents from and against, any and all demands, claims, causes of action, fines, penalties, damages (including consequential damages), liabilities, judgments, and expenses (including, without limitation, reasonable attorneys' fees) which arise out of or relate to: (1) the use or occupancy or manner of use or occupancy of the Parking Facility by Tenant or any person claiming under Tenant; (2) any activity, work, or thing done or permitted by Tenant in or about the Parking Facility; (3) any breach by Tenant or its employees, agents, contractors or invitees of this Lease; and (4) any injury, loss or damage to the person, property or business of Tenant, its employees, agents, or contractors or any invitees entering upon the Parking Facility under the express or implied invitation of Tenant. If any action or proceeding is brought against Landlord or its employees or agents by reason of any such claim for which Tenant has indemnified Landlord, Tenant, upon written notice from Landlord, will defend the same at Tenant's expense with counsel reasonably satisfactory to Landlord.

(b) Landlord's Indemnification. Landlord will neither hold nor attempt to hold Tenant, its employees or agents liable for, and Landlord will indemnify and hold harmless Tenant, its employees and agents from and against, any and all demands, claims, causes of action, fines, penalties, damages (including consequential damages), liabilities, judgments, and expenses (including, without limitation, reasonable attorneys' fees) which arise out of or relate to: (1) the use or occupancy or manner of use or occupancy of the Parking Facility by Landlord or any person (other than Tenant) claiming under Landlord; (2) any activity, work, or thing done or permitted by Landlord in or about the Parking Facility; (3) any breach by Landlord or its employees, agents, contractors or invitees of this Lease; and (4) any injury, loss or damage to the person, property or business of Landlord, its employees, agents, or contractors or any invitees entering upon the Parking Facility under the express or implied invitation of Landlord. If any

action or proceeding is brought against Tenant or its employees or agents by reason of any such claim for which Landlord has indemnified Tenant, Landlord, upon written notice from Tenant, will defend the same at Landlord's expense with counsel reasonably satisfactory to Tenant.

(c) Waiver and Release. Tenant, as a material part of the consideration to Landlord for this Lease, by this Section waives and releases all claims against Landlord, its employees and agents with respect to all matters for which Landlord has disclaimed liability pursuant to the provisions of this Lease. Landlord, as a material part of the consideration to Tenant for this Lease, by this Section waives and releases all claims against Tenant, its employees and agents with respect to all matters for which Tenant has disclaimed liability pursuant to the provisions of this Lease.

ARTICLE 5. GENERAL

5.1 Events of Default. The occurrence of any one or more of the following events shall constitute an "Event of Default" under this Lease: (i) any part of the Rent (including the Monthly Rent and the Additional Rent) is not paid when due, or (ii) any nonperformance, breach or default by Tenant under any other provision of this Lease.

5.2 Landlord's Remedies. If any Event of Default occurs, then Landlord shall have the right, at its election, in accordance with the procedures and requirements of applicable Washington law:

(a) To terminate this Lease, in which case Tenant's right to possession of the Parking Stalls will cease and this Lease will be terminated as if the expiration of the term fixed in such notice were the end of the Term.

(b) To cure any Event of Default and to charge Tenant for the cost of effecting such cure, including without limitation reasonable attorneys' fees and Default Interest provided that Landlord will have no obligation to cure any such Event of Default of Tenant.

(c) If Tenant is in default for non-payment of rent, to suspend Tenant's right to possession of the Parking Stalls until such time as the rent is brought current.

5.3 Rights and Remedies Cumulative; Attorney's Fees. Each right and remedy provided for in this Lease is cumulative and is in addition to every other right or remedy provided for in this Lease or at law or in equity. If a dispute arises under the terms of this Lease or if any payment required by this Lease is not paid when due and the matter is turned over to an attorney, the prevailing party in the dispute will be entitled to receive its reasonable attorneys' fees in addition to the other damages and costs recoverable under this Lease.

5.4 Quiet Enjoyment. So long as Tenant performs all covenants and obligations contained in this Lease, Landlord warrants quiet enjoyment of the Parking Stalls (and to the extent herein granted, the Parking Facility) by Tenant; provided that Landlord, its agents or representatives may enter upon and inspect the Parking Stalls at reasonable times upon reasonable notice. Landlord's failure to comply with this Section shall not give Tenant any right to terminate this Lease, to abate or reduce the Monthly Rent or Additional Rent or fail to perform any of Tenant's obligations hereunder. Provided, that this Lease shall be subject to the Parking Facility's condominium declarations as recorded.

5.5 Liens. Tenant will keep the Parking Stalls free and clear of all mechanics' liens and other liens on account of work done for Tenant or persons claiming under Tenant. Landlord will keep the Parking Facility (including the Parking Stalls) free and clear of all mechanics' liens and other liens on account of work done for Landlord or persons claiming under Landlord.

5.6 Environmental Matters.

(a) Tenant's Obligations.

(1) Tenant will not cause or permit the storage, treatment or disposal of any Hazardous Materials in, on, or about the Parking Facility by Tenant, its agents, employees or contractors. Tenant will not permit the Parking Facility to be used or operated in a manner that may cause the Parking Stalls or any part of the Parking Facility to be contaminated by any Hazardous Materials in violation of any Environmental Laws. Tenant will not use or permit the Parking Stalls to be used for maintenance of vehicles.

(2) Tenant will be solely responsible for and will defend, indemnify, and hold Landlord, its agents and employees harmless from and against all direct claims, costs, and liabilities, including attorneys' fees and costs, arising out of or in connection with Tenant's breach of its obligations in this Section.

(3) Tenant will be solely responsible for and will defend, indemnify and hold Landlord, its agents, and employees harmless from and against any and all direct claims, costs, and liabilities, including attorneys' fees and costs, arising out of or in connection with Tenant's introduction of Hazardous Materials to the Parking Facility. Tenant's obligations under this Section shall survive the expiration or other termination of this Lease.

(b) Landlord's Obligations.

(1) Landlord will not cause or permit the storage, treatment or disposal of any Hazardous Materials in, on, or about the Parking Facility by Landlord, its agents, employees or contractors. Landlord will not permit the Parking Facility to be used or operated in a manner that may cause the Parking Stalls or any part of the Parking Facility to be contaminated by any Hazardous Materials in violation of any Environmental Laws. Landlord will not use or permit any portion of the Parking Facility to be used for maintenance of vehicles.

(2) Landlord will be solely responsible for and will defend, indemnify, and hold Tenant, its agents and employees harmless from and against all direct claims, costs, and liabilities, including attorneys' fees and costs, arising out of or in connection with Landlord's breach of its obligations in this Section.

(3) Landlord will be solely responsible for and will defend, indemnify and hold Tenant, its agents, and employees harmless from and against any and all direct claims, costs, and liabilities, including attorneys' fees and costs, arising out of or in connection with Landlord's introduction of Hazardous Materials to the Parking Facility. Landlord's obligations under this Section shall survive the expiration or other termination of this Lease.

(c) Definitions.

"Hazardous Materials" means asbestos, petroleum products, explosives, radioactive materials, hazardous waste, hazardous substances, or hazardous materials including, without limitation, substances defined as "hazardous substances" in the Comprehensive Environmental Response Compensation Liability Act of 1980, as amended, 42 U. S. C. Sec. 9601-9657 ("CERCLA"); the Hazardous Material Transportation Act of 1975, 49 U.S.C. Sec. 1801-1812; the Resource Conservation Recovery Acts of 1976, 42 U.S.C. Sec. 6901-6987; the Occupational Safety and ~~health~~ Health Act of 1970, 29 U.S.C. Sec. 6901-6987; the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et seq., or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning hazardous materials, wastes or substances now or at any time hereinafter in effect (collectively, "Environmental Laws").

5.7 Termination. At the Expiration Date or other termination of this Lease, Tenant will promptly quit and surrender the Parking Stalls to Landlord in good order and repair, except for (a) matters arising from Landlord's maintenance and repair obligations as set forth elsewhere herein and (b) ordinary wear and tear and damage by casualty. All effects, additions and improvements on the Parking Stalls after the end of the Term shall be deemed conclusively to have been abandoned and may be appropriated, sold, stored, destroyed, or otherwise disposed of by Landlord without notice to Tenant or any other person and without obligation to account for them.

5.8 Assignment and Subletting. Except as to assignment or subletting to tenants and owners of real property of or in the office building bounded by these City of Auburn public streets: East Main Street, North Division Street, First Street NE and Auburn Avenue North (for which no approval shall be required), Tenant shall not assign or sublet the Parking Stalls without the written approval of Landlord, which approval may be withheld in the sole discretion of the Landlord.

5.9 Subsequent Landlord. In the event of any sale or lease of Landlord's interest in the Parking Facility, the existing Landlord shall be relieved of all covenants and obligations hereunder so long as the successor Landlord assumes in writing all the covenants and obligations hereunder of the existing Landlord.

5.10 Notices. Notices and other communications required under this Lease shall be in writing and shall be deemed given (i) upon personal delivery, (ii) three (3) business days after deposit in the United States mail, first class, postage prepaid, certified, return receipt requested, or (iii) one (1) business day after timely delivery to an overnight courier, to the addresses as set forth below. Either party may by similar notice change the address to which future notices or other communications shall be sent.

LANDLORD

City of Auburn
25 West Main Street
Auburn, WA 98001
ATTN: _____

TENANT

Auburn Professional Plaza, LLC
c/o Michael John Klein, Esq.
5743 Corsa Avenue, Suite 216
Westlake Village, CA 91362

with concurrent copies to

City of Auburn
25 West Main Street
Auburn, WA 98001
ATTN: City Attorney

with concurrent copies to:

Auburn Professional Plaza, LLC
P.O. Box 1294
Auburn, Washington 98071-1294
Attention: Jeffrey Oliphant, President

and to:

Anthony L. Rafel, Esq.
Rafel Law Group, PLLC
999 Third Avenue, Suite 1600
Seattle, WA 98101

5.11 Time is of the Essence. Time is of the essence for each and every provision of this Lease.

5.12 No Waiver. The waiver by either Landlord or Tenant of any agreement, condition, or provision contained in this Lease will not be deemed to be a waiver of any subsequent breach of the same or any other agreement, condition, or provision contained in this Lease.

5.13 Brokers. Landlord and Tenant respectively represent and warrant to each other that neither of them has consulted or negotiated with any broker or finder with regard to the Parking Facility and will defend, indemnify and hold the other party harmless from any claims or damages, including reasonable attorneys' fees, arising from any breach of this provision.

5.14 Authority. Each of the parties executing this Lease on behalf of the Tenant or the Landlord represents to the other party that such party is authorized to do so by requisite action of the party to this Lease.

5.15 Governing Law. This Lease will be governed by and construed pursuant to the laws of the state of Washington. Venue shall be in the Superior Court for King County, Washington.

5.16 Entire Agreement; Amendment. This Lease incorporates by reference any condominium declarations that may be filed in regard to the Parking Facility. Other than those documents, this Lease contains the entire agreement between Landlord and Tenant. No amendment, alteration, modification of, or addition to the Lease will be valid or binding unless expressed in writing and signed by Landlord and Tenant.

5.17 Late Rent. Any installment of Monthly Rent or Additional Rent not paid on its due date shall bear a late charge of 5% of the delinquent installment, to compensate Landlord for its administrative expenses relating to such delinquency. Further, any Monthly Rent or Additional Rent not paid when due will accrue interest at the default rate of the Prime Rate plus 5% per annum, but in no event in an amount in excess of the maximum rate allowed by applicable law ("Default Interest") from the date on which it was due until the date on which it is paid in full with accrued interest.

The term "Prime Rate" shall mean the rate of interest from time to time as published in the *Wall Street Journal* under the table, "Money Rates," or any successor to it, as the prime rate. If the *Wall Street Journal* or any successor to it ceases to publish the prime rate, the Prime Rate will be a comparable interest rate designated by Landlord to replace the Prime Rate.

5.18 Landlord Fees. If Tenant requests that Landlord take any action or give any consent required or permitted under this Lease or execute an instrument or document of estoppel, subordination, nondisturbance or the like, Tenant will reimburse Landlord for the fees, costs and expenses incurred in reviewing, negotiating, preparing, processing, executing and delivering the proposed action, consent, instrument or document, including, without limitation, reasonable attorneys' fees (including Landlord's in-house counsel fees and costs, at market-rate) and engineers' fees (including Landlord's in-house engineers' fees and costs, at market-rate), on or before ten (10) days after Landlord's delivery to Tenant of a statement of such fees, costs and expenses. Tenant will be obligated to make such reimbursement without regard to whether Landlord consents to any such proposed action or executes any such proposed instrument or document.

5.19 Rent Abatement. In the event the Parking Facility is damaged or destroyed, or Tenant is otherwise denied access thereto for more than three (3) consecutive business days (Monday – Friday, excluding legal holidays), the rent payable hereunder shall be abated until such time as access is restored to the Parking Facility and Parking Stalls.

[This page ends here.]

EXECUTED as of the day and year first above written.

THE CITY OF AUBURN
A Municipal Corporation

By: _____
Peter Lewis, Mayor

Approved:

City Attorney

STATE OF WASHINGTON
COUNTY OF KING

On _____, 2008 before me, _____,

Notary Public, personally appeared Peter Lewis, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

SIGNATURE OF NOTARY

AUBURN PROFESSIONAL PLAZA, LLC
a Washington limited liability company

By: Oliphant Real Estate Services, Inc.
a Washington corporation
its manager and managing member

By: _____
Jeffrey Oliphant, President

STATE OF _____

COUNTY OF _____

On _____, 2008 before me, _____,

Notary Public, personally appeared Jeffrey Oliphant, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person(s), or the entity upon behalf of which he acted, executed the instrument.

WITNESS my hand and official seal.

SIGNATURE OF NOTARY